

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN ASSEMBLY AUGUST 31, 2009

AMENDED IN ASSEMBLY JULY 1, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 13, 2009

## SENATE BILL

**No. 407**

---

### Introduced by Senator Padilla

February 26, 2009

---

An act to ~~amend Section 1102.6 of,~~ *add Section 1102.155 to,* and to add Article 1.4 (commencing with Section 1101.1) to Chapter 2 of Title 4 of Part 4 of Division 2 of, the Civil Code, relating to water conservation.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Padilla. Property transfers: plumbing fixtures replacement.

(1) Existing law authorizes public entities that supply water, by the adoption of an ordinance or resolution pursuant to specified procedures, to adopt and enforce a water conservation program. Existing law requires certain disclosures to be made upon the transfer of real estate. Existing law requires that all water closets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively.

This bill would establish requirements for residential and commercial real property built and available for use on or before January 1, 1994,

for replacing plumbing fixtures that are not water conserving, as defined as noncompliant plumbing fixtures. On and after January 1, 2014, the bill would require, for all building alterations or improvements to single-family residential real property, as defined, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. By creating a new duty to inspect for local officials, this bill would impose a state-mandated local program. The bill would require, on or before January 1, 2017, that all noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

The bill would require, on or before January 1, 2019, that all noncompliant plumbing fixtures in multifamily residential real property and commercial real property, as defined, be replaced with water-conserving plumbing fixtures. The bill would require, on and after January 1, 2014, for specified building alterations or improvements to multifamily residential real property and commercial real property, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. By creating a new duty to inspect for local officials, this bill would impose a state-mandated local program.

The bill would require, on and after January 1, ~~2014~~, 2017, that a seller or transferor of single-family residential real property, multifamily residential real property, or commercial real property disclose to a purchaser or transferee, in writing, specified requirements for replacing plumbing fixtures, and whether the real property includes noncompliant plumbing. *The bill would require, on and after January 1, 2017, a seller of certain residential real property to make a specified disclosure in this regard. The bill would permit an owner or the owner's agent to enter rental property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures, as specified, and would require, on and after January 1, 2019, that the water-conserving plumbing fixtures prescribed by the bill operate at the manufacturer's rated water consumption at the time that a tenant takes possession, as specified.* The bill would provide that the application of its requirements may be postponed up to one year, as specified, with respect to a building for which a demolition permit has been issued. The bill would permit a city or county *or retail water supplier* to enact a local ordinance or

policy that promotes compliance with the bill's provisions or that will result in greater water savings than otherwise provided by the bill. The bill would provide that ~~it does not preempt local ordinances requiring retrofit of noncompliant plumbing fixtures adopted prior to July 1, 2009, that are at least as restrictive as its provisions~~ *any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, is exempt from its requirements so long as the ordinance remains in effect.*

~~(2) Existing law requires certain transferors of real property improved with 1 to 4 dwelling units to make specified disclosures to prospective transferees regarding the characteristics of the property and prescribes forms for the purpose of making these disclosures.~~

~~This bill would revise the disclosure form described above to include references to water-conserving plumbing fixtures.~~

~~(3)~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 1.4 (commencing with Section 1101.1)  
2 is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil  
3 Code, to read:

4

5 Article 1.4. Installation of Water Use Efficiency Improvements

6

7 1101.1. The Legislature finds and declares all of the following:

8 (a) Adequate water supply reliability for all uses is essential to  
9 the future economic and environmental health of California.

10 (b) Environmentally sound strategies to meet future water supply  
11 and wastewater treatment needs are key to protecting and restoring  
12 aquatic resources in California.

13 (c) There is a pressing need to address water supply reliability  
14 issues raised by growing urban areas.

1 (d) Economic analysis by urban water agencies has identified  
2 urban water conservation as a cost-effective approach to addressing  
3 water supply needs.

4 (e) There are many water conservation practices that produce  
5 significant energy and other resource savings that should be  
6 encouraged as a matter of state policy.

7 (f) Since the 1991 signing of the “Memorandum of  
8 Understanding Regarding Urban Water Conservation in  
9 California,” many urban water and wastewater treatment agencies  
10 have gained valuable experience that can be applied to produce  
11 significant statewide savings of water, energy, and associated  
12 infrastructure costs. This experience indicates a need to regularly  
13 revise and update water conservation methodologies and practices.

14 (g) To address these concerns, it is the intent of the Legislature  
15 to require that residential and commercial real property built and  
16 available for use or occupancy on or before January 1, 1994, be  
17 equipped with water-conserving plumbing fixtures.

18 (h) It is further the intent of the Legislature that retail water  
19 suppliers are encouraged to provide incentives, financing  
20 mechanisms, and funding to assist property owners with these  
21 retrofit obligations.

22 1101.2. Except as provided in Section 1101.7, this article shall  
23 apply to residential and commercial real property built and  
24 available for use on or before January 1, 1994.

25 1101.3. For the purposes of this article:

26 (a) “Commercial real property” means any real property that is  
27 improved with, or consisting of, a building that is intended for  
28 commercial use, including hotels and motels, that is not a  
29 single-family residential real property or a multifamily residential  
30 real property.

31 (b) “Multifamily residential real property” means any real  
32 property that is improved with, or consisting of, a building  
33 containing more than one unit that is intended for human habitation,  
34 or any mixed residential-commercial buildings or portions thereof  
35 that are intended for human habitation. Multifamily residential  
36 real property includes residential hotels but does not include hotels  
37 and motels that are not residential hotels.

38 (c) “Noncompliant plumbing fixture” means any of the  
39 following:

1 (1) Any toilet manufactured to use more than 1.6 gallons of  
2 water per flush.

3 (2) Any urinal manufactured to use more than one gallon of  
4 water per flush.

5 (3) Any showerhead manufactured to have a flow capacity of  
6 more than 2.5 gallons of water per minute.

7 (4) Any interior faucet that emits more than 2.2 gallons of water  
8 per minute.

9 (d) “Single-family residential real property” means any real  
10 property that is improved with, or consisting of, a building  
11 containing not more than one unit that is intended for human  
12 habitation.

13 (e) “Water-conserving plumbing fixture” means any fixture that  
14 is in compliance with current building standards applicable to a  
15 newly constructed real property of the same type.

16 (f) “Sale or transfer” means the sale or transfer of an entire real  
17 property estate or the fee interest in that real property estate and  
18 does not include the sale or transfer of a partial interest, including  
19 a leasehold.

20 1101.4. (a) On and after January 1, 2014, for all building  
21 alterations or improvements to single-family residential real  
22 property, as a condition for issuance of a certificate of final  
23 completion and occupancy or final permit approval by the local  
24 building department, the permit applicant shall replace all  
25 noncompliant plumbing fixtures with water-conserving plumbing  
26 fixtures.

27 (b) On or before January 1, 2017, noncompliant plumbing  
28 fixtures in any single-family residential real property shall be  
29 replaced by the property owner with water-conserving plumbing  
30 fixtures.

31 (c) On and after January 1, ~~2014~~ 2017, a seller or transferor of  
32 single-family residential real property shall disclose in writing to  
33 the prospective purchaser or transferee, pursuant to Section 1102.6,  
34 the requirements of subdivision (b) and whether the real property  
35 includes any noncompliant plumbing fixtures.

36 1101.5. (a) On or before January 1, 2019, all noncompliant  
37 plumbing fixtures in any multifamily residential real property and  
38 in any commercial real property shall be replaced with  
39 water-conserving plumbing fixtures.

1     **(b)** *An owner or the owner's agent may enter the owner's*  
2 *property for the purpose of installing, repairing, testing, and*  
3 *maintaining water-conserving plumbing fixtures required by this*  
4 *section, consistent with notice requirements of Section 1954.*

5     **(c)** *On and after January 1, 2019, the water-conserving*  
6 *plumbing fixtures required by this section shall be operating at*  
7 *the manufacturer's rated water consumption at the time that the*  
8 *tenant takes possession. A tenant shall be responsible for notifying*  
9 *the owner or owner's agent if the tenant becomes aware that a*  
10 *water-conserving plumbing fixture within his or her unit is not*  
11 *operating at the manufacturer's rated water consumption. The*  
12 *owner or owner's agent shall correct an inoperability in a*  
13 *water-conserving plumbing fixture upon notice by the tenant or if*  
14 *detected by the owner or the owner's agent.*

15     ~~**(b)**~~

16     **(d)** (1) On and after January 1, 2014, all noncompliant plumbing  
17 fixtures in any multifamily residential real property and any  
18 commercial residential real property shall be replaced with  
19 water-conserving plumbing fixtures in the following circumstances:

20     **(A)** For building additions in which the sum of concurrent  
21 building permits by the same permit applicant would increase the  
22 floor area of the space in a building by more than 10 percent, the  
23 building permit applicant shall replace all noncompliant plumbing  
24 fixtures in the building.

25     **(B)** For building alterations or improvements in which the total  
26 construction cost estimated in the building permit is greater than  
27 one hundred fifty thousand dollars (\$150,000), the building permit  
28 applicant shall replace all noncompliant plumbing fixtures that  
29 service the specific area of the improvement.

30     **(C)** Notwithstanding subparagraph (A) or (B), for any alterations  
31 or improvements to a room in a building that require a building  
32 permit and that room contains any noncompliant plumbing fixtures,  
33 the building permit applicant shall replace all noncompliant  
34 plumbing fixtures in that room.

35     **(2)** Replacement of all noncompliant plumbing fixtures with  
36 water-conserving plumbing fixtures, as described in paragraph (1),  
37 shall be a condition for issuance of a certificate of final completion  
38 and occupancy or final permit approval by the local building  
39 department.

40     ~~**(e)**~~

1 (e) On and after January 1, ~~2011~~, 2019, a seller or transferor of  
2 multifamily residential real property or of commercial real property  
3 shall disclose to the prospective purchaser or transferee, in writing,  
4 the requirements of subdivision (a) and whether the property  
5 includes any noncompliant plumbing fixtures. This disclosure may  
6 be included in other transactional documents.

7 1101.6. The duty of an owner or building permit applicant to  
8 comply with the requirements of this article shall be postponed  
9 for one year from the date of issuance of a demolition permit for  
10 the building. If the building is demolished within the one-year  
11 postponement, the requirements of this article shall not apply. If  
12 the building is not demolished after the expiration of one year, the  
13 provisions of this article shall apply, subject to appeal to the local  
14 building department, even though the demolition permit is still in  
15 effect or a new demolition permit has been issued.

16 1101.7. This article shall not apply to any of the following:

17 (a) Registered historical sites.

18 (b) Real property for which a licensed plumber certifies that,  
19 due to the age or configuration of the property or its plumbing,  
20 installation of water-conserving plumbing fixtures is not technically  
21 feasible.

22 (c) A building for which water service is permanently  
23 disconnected.

24 1101.8. A city, county, or city and county, *or a retail water*  
25 *supplier* may do either of the following:

26 (a) Enact local ordinances or establish policies that promote  
27 compliance with this article.

28 (b) Enact local ordinances *or establish policies* that will result  
29 in a greater amount of water savings than those provided for in  
30 this article.

31 ~~1101.9. This article does not preempt local ordinances requiring~~  
32 ~~retrofit of noncompliant plumbing fixtures adopted prior to July~~  
33 ~~1, 2009, by a city, county, or city and county that are at least as~~  
34 ~~restrictive as the requirements of this article.~~

35 ~~SEC. 2. Section 1102.6 of the Civil Code is amended to read:~~

36 ~~1102.6. The disclosures required by this article pertaining to~~  
37 ~~the property proposed to be transferred are set forth in, and shall~~  
38 ~~be made on a copy of, the following disclosure form:~~

1 -



1 -

1 -

1 -

1 -

1 1101.9. Any city, county, or city and county that has adopted  
2 an ordinance requiring retrofit of noncompliant plumbing fixtures  
3 prior to July 1, 2009, shall be exempt from the requirements of  
4 this article so long as the ordinance remains in effect.

5 SEC. 2. *Section 1102.155 is added to the Civil Code, to read:*

6 1102.155. (a) (1) *The seller of residential real property subject*  
7 *to this article shall disclose, in writing, that Section 1101.4 of the*  
8 *Civil Code requires that California single-family residences be*  
9 *equipped with water-conserving plumbing fixtures on or before*  
10 *January 1, 2017, and shall disclose whether the property includes*  
11 *any noncompliant plumbing fixtures.*

12 (2) *The seller shall affirm that this representation is that of the*  
13 *seller and not a representation of any agent, and that this*  
14 *disclosure is not intended to be part of any contract between the*  
15 *buyer and the seller. The seller shall further affirm that this*  
16 *disclosure is not a warranty of any kind by the seller or any agent*  
17 *representing any principal in the transaction and is not a substitute*  
18 *for any inspections that or warranties any principal may wish to*  
19 *obtain.*

20 (b) *This section shall become operative on January 1, 2017.*

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 a local agency or school district has the authority to levy service  
24 charges, fees, or assessments sufficient to pay for the program or  
25 level of service mandated by this act, within the meaning of Section  
26 17556 of the Government Code.